

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 9, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP744**

**Cir. Ct. No. 2010CV4171**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**MADISON INVESTMENT ADVISORS, INC.,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LESLIE MARTIN, III,**

**DEFENDANT-APPELLANT,**

**AND**

**LESLIE MARTIN, III,**

**PLAINTIFF-APPELLANT,**

**V.**

**MADISON INVESTMENT ADVISORS, INC., FRANK BURGESS, KAY  
FRANK, MICHAEL SCHLAGETER AND JAY SEKELSKY,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County:  
JUAN B. COLAS, Judge. *Affirmed.*

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Leslie Martin, III, appeals an order of the circuit court that granted summary judgment in favor of the defendants-respondents and against Martin. Martin argues on appeal that summary judgment was improper because he presented evidence to the circuit court as to the existence of a genuine issue of material fact and supported his position with specific facts. For the reasons discussed below, we affirm the order of the circuit court.

#### BACKGROUND

¶2 Martin was an employee of Madison Investment Advisors, Inc. from August 2008 until July 12, 2010. The terms of Martin’s employment and compensation were contained in a letter to him from Madison Investment employee Frank Burgess dated August 6, 2008. The parties agreed to assume for purposes of summary judgment that the letter from Burgess to Martin was a valid employment agreement.

¶3 Prior to his employment by Madison Investment, Martin was an employee of CUNA Mutual Group. In 2009, while Martin was employed with Madison Investment, Madison Investment closed on a transaction with CUNA. As part of the transaction, Madison Investment purchased business assets from CUNA, including management rights to certain mutual funds and accounts. The CUNA assets were transferred to Madison Asset Management, LLC (“Madison Asset”), a subsidiary of Madison Investment.

¶4 On August 4, 2010, Madison Investment filed a complaint against Martin in circuit court, seeking a declaratory judgment stating that Martin was not entitled to receive any incentive compensation from Madison Investment with respect to the CUNA transaction. On August 6, 2010, Martin filed his own complaint, naming Madison Investment as a defendant and also naming Burgess and other Madison Investment employees as additional defendants (Madison Investment and the employees named as respondents will be referred to hereafter collectively as “Madison Investment”). Martin asserted claims of unpaid compensation, breach of contract, breach of implied duty of good faith, tortious interference with contract, wrongful discharge, and violations of WIS. STAT. chs. 109 and 134. Martin then filed an amended complaint that added a claim for civil conspiracy.

¶5 The circuit court consolidated the two cases. Madison Investment filed a motion for summary judgment on the declaratory judgment claim and on all of Martin’s remaining claims. Martin opposed the motion, arguing that the transaction between Madison Investment and CUNA was made possible by his contacts at CUNA and his knowledge of business opportunities there. Martin asserted that, through the transaction, Madison Asset became a client of Madison Investment from which Madison Investment earned fee revenues. He claimed that he was entitled to a percentage of the fee revenues under the incentive compensation provision of his employment agreement.

¶6 The circuit court granted the motion for summary judgment and dismissed all of Martin’s claims. The court concluded that Martin had not provided evidentiary support for his assertion that Madison Asset was a client of Madison Investment or for his assertion that Madison Investment earned fee revenues from Madison Asset.

## DISCUSSION

¶7 A party moving for summary judgment must establish a record sufficient to demonstrate that no triable issue of material fact exists on any issue presented. *Transportation Ins. Co. v. Hunzinger Construction Co.*, 179 Wis. 2d 281, 290, 507 N.W.2d 136 (Ct. App. 1993). *See also* WIS. STAT. § 802.08(2) (2011-12).<sup>1</sup> Once that burden is met, “the opposing party may avoid summary judgment only by ‘set[ting] forth specific facts showing that there is a genuine issue for trial.’” *Hunzinger Construction Co.*, 179 Wis. 2d at 291 (quoting § 802.08(3)). We review a circuit court’s ruling on summary judgment de novo, and we apply the governing standards “‘just as the trial court applied those standards.’” *Techworks, LLC v. Wille*, 2009 WI App 101, ¶2, 318 Wis. 2d 488, 770 N.W.2d 727 (quoting *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987)).

¶8 Martin identifies two interrelated issues on appeal. He argues that he demonstrated a genuine issue of material fact in response to Madison Investment’s summary judgment motion in circuit court. Specifically, he asserts that the issue whether Madison Asset was a client of Madison Investment is a genuine, material factual issue that should have precluded summary judgment. Martin also asserts that he set forth specific facts in support of his argument that Madison Asset was a client of Madison Investment from which Madison Investment received fee revenues. He references the circuit court’s statement in its written order that “[t]here is no legal or logical reason that Madison Asset could

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

not be a ‘client’ of [Madison Investment] within the meaning of the contract.” Martin then asserts that, by going on to decide that Madison Asset was *not* a client of Madison Investment, the circuit court resolved a disputed factual issue that should have been left to a jury.

¶9 In response, Madison Investment asserts that Madison Asset did not become a client of Madison Investment as part of the transaction between Madison Investment and CUNA, and that Madison Asset never has been a client of Madison Investment. Madison Investment argues that, even if Madison Asset were its client, Martin could not have solicited the relationship. Madison Investment points to record evidence demonstrating that Madison Asset has been a subsidiary of Madison Investment since June 1, 2003, and that Martin did not start working for Madison Investment until August 2008. Madison Investment also argues that the provisions of the CUNA-Madison Investment contracts cited by Martin demonstrate only that Madison Investment purchased management rights to a number of CUNA’s financial products, that CUNA received a non-voting interest in Madison Asset, and that revenues were to be distributed as consideration for the transaction.

¶10 It is apparent from both parties’ briefs that there are facts in dispute. However, the “‘mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.’” *Baxter v. DNR*, 165 Wis. 2d 298, 312, 477 N.W.2d 648 (Ct. App. 1991) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in *Anderson*)). A material fact is one that is of consequence to the litigation’s merits. *Schmidt v. Northern States Power Co.*, 2007 WI 136, ¶24, 305 Wis. 2d 538, 742 N.W.2d 294. We are not persuaded that any of the disputed factual issues here are material to the merits of the case.

¶11 In the argument portion of his brief-in-chief, Martin asserts that the “overwhelming evidence” demonstrates that Madison Asset was a client of Madison Investment from which Madison Investment derived revenues. After making this conclusory statement, Martin cites only a copy of contracts that were executed by Madison Investment and CUNA as part of the 2009 transaction between those two entities. Martin takes the position that these contracts prove the existence of a fee-generating, client relationship between Madison Investment and Madison Asset.

¶12 Our own review of the contracts comprising the CUNA-Madison Investment transaction does not reveal any provision stating that Madison Asset is a client of Madison Investment, or became one as a result of the transaction. Additionally, no term in Martin’s employment agreement with Madison Investment, which the parties agree is unambiguous, provides that Martin is entitled to compensation for solicitation of an outside party for purposes of pursuing a joint venture or acquisition.

¶13 Martin’s employment agreement with Madison Investment states, in relevant part:

Regarding any funds or clients or subadvisory arrangements that you solicit on our behalf and become clients of [Madison Investment], then supervise the support of such clients, you will receive a percentage of the fee revenues we receive .... These will be clients or relationships where you are/were the primary initial contact, regardless of the costs or efforts by other [Madison Investment] employees in the sales or support of such clients.

Martin fails to direct us to any evidence in the record that establishes that Madison Asset became a client of Madison Investment from which Madison Investment received fee revenues. Martin references portions of his summary judgment brief

to support his position. However, briefs and the arguments they contain are not evidence. *See Merco Distrib. Corp. v. O & R Engines, Inc.*, 71 Wis. 2d 792, 795-96, 239 N.W.2d 97 (1976). It is not this court's responsibility to sift through the record to find evidence to support Martin's arguments. *See Forman v. McPherson*, 2004 WI App 145, ¶6 n.4, 275 Wis. 2d 604, 685 N.W.2d 603.

¶14 In sum, Martin has failed to meet his burden of demonstrating that a genuine, triable issue exists as to whether Madison Asset became Madison Investment's client and generated fee revenues for Madison Investment. Accordingly, we affirm the summary judgment order of the circuit court.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

